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Felix J. D'Ambrosio  
Jones, Tullar & Cooper, P.C.  
P.O. Box 2266 Eads Station  
Arlington, VA 22202

In re Application of SIMOES	:	
U.S. Application No.: 09/766,485	:	DECISION ON PETITION
Int. Application No.: PCT/EP96/04945	:	
Int. Filing Date: 12 November 1996	:	UNDER 37 CFR 1.137(b)
Priority Date: none	:	
Attorney Docket No.: none	:	
For: INSTRUMENT FOR THE MEDICAL OR	:	
DENTAL TREATMENT OF CHILDREN	:	

This is in response to applicant's "Renewed Petition Under 37 C.F.R. 1.137 (b)" filed 21 December 2004.

### **BACKGROUND**

On 12 November 1996, applicant filed international application PCT/EP96/04945. A copy of the international application was communicated to the USPTO from the International Bureau on 22 May 1998. The twenty-month period for paying the basic national fee in the United States expired at midnight on 13 July 1998 (12 July 1998 was a Sunday).

International application PCT/EP96/04945 became abandoned as to the United States at midnight on 13 July 1998 for failure to pay the basic national fee.

On 18 August 1998, applicant filed United States national application number 09/135,486 under 35 U.S.C. 111.

On 04 April 2000, U.S. application number 09/135,486 issued as U.S. patent number 6,045,360.

On 19 January 2001, applicant filed reissue application number 09/766,485 along with a petition under 37 CFR 1.137(b).

On 22 March 2002, this Office mailed a decision dismissing the 19 January 2001 petition under 37 CFR 1.137(b) on grounds that applicant had not shown the abandonment to be unintentional.

On 22 May 2002, applicant filed a renewed petition under 37 CFR 1.137(b).

On 19 June 2002, this Office mailed a decision dismissing the 22 May 2002 petition.

On 21 December 2004, applicant filed the present renewed petition under 37 CFR 1.137(b).

### **DISCUSSION**

The renewed petition states that the focus of the revival should not be whether 35 U.S.C. 111 or 35 U.S.C. 371 was the proper vehicle but rather should be to afford applicant the opportunity to claim benefit under 35 U.S.C. 120. However, in order to claim benefit of international application PCT/EP96/04945 under 35 U.S.C. 120, applicant needed to file a national stage application under 35 U.S.C. 371 or a continuation application under 35 U.S.C. 111 before the international application became abandoned. Applicant failed to timely file either type of application. Furthermore, applicant has not demonstrated that the delay in filing either type of application was unintentional. Rather, the evidence indicates that applicant intentionally filed a regular application under 35 U.S.C. 111 without claiming priority to the international application.

### **CONCLUSION**

For the reasons above, the renewed petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)". No additional petition fee is due. Extensions of time are available under 37 CFR 1.136.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read "Bryan Tung", written in a cursive style.

Bryan Tung  
PCT Legal Examiner  
PCT Legal Office

Telephone: 571-272-3303  
Facsimile: 571-273-0459